Syarikat Tingan Lumber Sdn Bhd v Takang Timber Sdn Bhd

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO Q–02–786 OF 2001

DENIS ONG, PS GILL AND HASHIM YUSOFF JJCA

27 MARCH 2003

Civil Procedure *— Appeal — Appeal from registrar — Ruling by deputy registrar on admissibility of documents — Whether ruling by deputy registrar amounted to a decision under s 3 of Courts of Judicature Act 1964 — Whether ruling of deputy registrar was made in the course of trial or hearing of cause or matter — Whether ruling of deputy registrar disposed final rights of parties — Whether appeal from ruling of deputy registrar was properly brought before the High Court*

Statutory Interpretation *— Canons of construction — Noscitur a sociis — Contextual interpretation — Interpretation of word 'decision' in O 56 of Rules of the High Court 1980 — Whether the application of the definition under s 3 of the Courts of Judicature Act 1964 would militate against O 56 r 1 of the Rules of the High Court 1980 — Courts of Judicature (Amendment) Act 1998, s 3 and Rules of the High Court 1980 O 56 r 1*

Words and Phrases *— 'decision' — Courts of Judicature Act 1964 s 3 — Rules of the High Court 1980 O 56*

This was the appellant's appeal against the decision of the learned judge of the High Court at Miri, who had dismissed the appellant's appeal against the ruling of the learned deputy registrar of the High Court, on an issue in regard to the admissibility of certain documents in the course of a hearing, for assessment of damages. On appeal before the learned High Court judge, and in the instant appeal, both counsel for the appellant and the respondent argued on a preliminary issue, namely, whether the appeal from the ruling by the deputy registrar in regard to the admissibility of the documents was competent, and properly brought before the learned High Court judge, in view of the definition of the word 'decision' in s 3 of the Courts of Judicature Act 1964 ('the Act'). Section 3 of the Act defined 'decision' as 'judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of parties'.

Held, dismissing the appeal:

(1) Even though authorities such as *Tuan Hj Ahmad Abdul Rahim v Arab-Malaysia Finance and Selangor Jaya Sdn Bhd v Pembinaan Keng Tong (Sabah) Sdn Bhd* stated that an appeal pursuant to O 56 r 1 of the Rules of the High Court 1980 ('RHC') was to proceed by way of a rehearing, this did not detract from the fact that there must be an appeal to begin with and that the appeal was against a 'judgment', 'order', or 'decision' of the registrar of the High Court. These authorities only served as a guide to the peculiar judicial

approach, whilst hearing an appeal pursuant to O 56 of the RHC. The fact remained that the legislature and the Rules Committee intended the powers exercised by a judge, pursuant to O 56 of the RHC, to be in his appellate capacity (see pp 499I–500B).

(2) The word 'decision' was not defined in the RHC. However, based on s 4 of the Act, which provided that 'in the event of inconsistency or conflict between this Act and any other written law other than the Constitution in force at the commencement of this Act, the provisions of this Act shall prevail', the meaning of the word 'decision' as provided for in s 3 of the Act, should therefore equally be ascribed to the word 'decision' in O 56 of the RHC (see p 500C–E).

(3) In respect of the words 'judgment' and 'order' in O 56 of the RHC, which were neither defined in the RHC nor the Act, the principles of contextual interpretation housed in the maxim of *noscitur a sociis* applied. Hence, the words 'judgment' and 'order' should take their color, as it were, from the meaning assigned to the word 'decision' in the Act (see pp 500E–F, 501D–E).

(4) Any ruling made in the course of a trial or hearing of any cause and matter, which did not finally dispose the rights of the parties, did not constitute a decision for the purpose of s 3 of the Act. It must also be emphasized that the ruling must be made in the course of a trial or hearing of the cause or matter. Therefore, what must be asked was not only whether a ruling had disposed the final rights of the parties but also whether it was a ruling made in the course of a trial or hearing of any cause or matter, for if it was not a ruling made in the course of a trial or matter, then regardless of the fact that it did not dispose of the rights of the parties, it may not be excluded by the definition of 'decision' as provided in s 3 of the Act and hence, would be appealable (see pp 501H–502D).

(5) In the instant case, the ruling by the learned deputy registrar on the admissibility of the documents, made in the course of a hearing, was a ruling on an issue other than the ultimate question, and thus, excluded by the exclusion clause in the definition of 'decision' in s 3 of the Act. Therefore, the deputy registrar's ruling was not appealable and the High Court judge was correct in upholding the preliminary objection of the respondent's counsel (see p 502D–E).

[Bahasa Malaysia summary

Ini merupakan rayuan perayu terhadap keputusan hakim Mahkamah Tinggi Miri yang bijaksana, yang telah menolak rayuan perayu terhadap keputusan timbalan pendaftar Mahkamah Tinggi yang bijaksana, tentang satu persoalan berhubung kebolehterimaan dokumen-dokumen tertentu semasa perbicaraan, untuk penilaian ganti rugi. Semasa rayuan di hadapan hakim Mahkamah Tinggi yang

A bijaksana, dan dalam rayuan semasa, kedua-dua peguam bagi pihak perayu dan responden telah berhujah tentang satu isu permulaan, iaitu, sama ada rayuan yang timbul dari keputusan timbalan pendaftar berhubung kebolehterimaan dokumen-dokumen adalah kompeten, dan telah dihadapkan dengan betul ke hadapan hakim Mahkamah Tinggi yang bijaksana, berdasarkan tafsiran perkataan 'decision' B dalam s 3 Akta Mahkamah Kehakiman 1964 ('Akta tersebut'). Seksyen 3 Akta tersebut mentafsirkan 'decision' sebagai 'judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of parties'.

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Diputuskan, menolak rayuan tersebut:

(1) Walaupun autoriti-autoriti seperti *Tuan Hj Ahmad Abdul Rahim v Arab-Malaysia Finance dan Selangor Jaya Sdn Bhd v Pembinaan Keng Tong (Sabah) Sdn Bhd* menyatakan bahawa satu rayuan D menurut A 56 k 1 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') perlu dimulakan melalui satu perbicaraan semula, ini tidak mengurangkan hakikat bahawa perlu ada rayuan dibuat dan bahawa rayuan adalah terhadap 'judgment', 'order', atau 'decision' pendaftar Mahkamah Tinggi. Autoriti-autoriti tersebut hanya bertindak sebagai panduan kepada pendekatan kehakiman E yang khusus, sementara mendengar satu rayuan menurut A 56 KMT. Hakikatnya badan perundangan dan Jawatankuasa Kaedah berniat bahawa kuasa-kuasa yang digunakan oleh seorang hakim, menurut A 56 KMT, mestilah berada dalam kapasiti rayuan beliau (lihat ms 499I–500B).

F (2) Perkataan 'decision' tidak ditafsirkan dalam KMT. Namun begitu, berdasarkan s 4 Akta tersebut, yang memperuntukkan bahawa 'in the event of inconsistency or conflict between this Act and any other written law other than the Constitution in force at the commencement of this Act, the provisions of this Act shall prevail', maksud perkataan 'decision' sebagaimana yang G diperuntukkan dalam s 3 Akta tersebut, hendaklah oleh demikian dianggap sama seperti perkataan 'decision' dalam A 56 KMT (lihat ms 500C–E).

(3) Berhubung perkataan-perkataan 'judgment' dan 'order' dalam A 56 KMT, yang tidak ditafsirkan dalam KMT mahupun Akta H tersebut, prinsip-prinsip penafsiran mengikut konteks sebagaimana yang terdapat dalam maxim *noscitur a sociis* digunakan. Justeru itu, perkataan-perkataan 'judgment' dan 'order' hendaklah digambarkan, sepertimana, daripada maksud yang diberikan kepada perkataan 'decision' dalam Akta tersebut (lihat ms 500E–F, 501D–E).

I (4) Apa-apa keputusan yang dibuat semasa perbicaraan apa-apa kausa atau perkara, yang tidak melenyapkan hak-hak terakhir pihak-pihak tersebut, tidak membentuk satu keputusan bagi

tujuan s 3 Akta tersebut. Ia juga perlu ditekankan bahawa keputusan tersebut perlu dibuat semasa satu perbicaraan kausa atau perkara. Oleh itu, apa yang perlu ditanya bukanlah sama ada satu keputusan telah melenyapkan hak-hak terakhir pihak-pihak tersebut tetapi juga sama ada ia adalah satu keputusan yang dibuat semasa satu perbicaraan kausa atau perkara, kerana jika ia bukan satu keputusan yang dibuat semasa satu perbicaraan kausa atau perkara, maka walaupun pada hakikatnya ia tidak melenyapkan hak-hak terakhir pihak-pihak, ia tidak mungkin terkecuali daripada tafsiran 'decision' sebagaimana yang diperuntukkan dalam s 3 Akta tersebut dan justeru itu, boleh dirayu (lihat ms 501H–502D).

(5) Dalam kes semasa, keputusan oleh timbalan pendaftar tentang kebolehterimaan dokumen-dokumen tersebut, yang dibuat semasa satu perbicaraan, adalah satu keputusan tentang satu persoalan selain daripada persoalan sebenar, dan oleh itu, terkecuali oleh fasal pengecualian dalam tafsiran 'decision' dalam s 3 Akta tersebut. Oleh itu, keputusan timbalan pendaftar tidak boleh dirayu dan hakim Mahkamah Tinggi adalah betul dalam mengekalkan bantahan awal peguam responden (lihat ms 502D–E).]

Notes

For cases on appeal from the registrar, see 2 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 571–582.

For cases on noscitur a sociis, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1442–1446.

Cases referred to

Maleb bin Su v Public Prosecutor [1984] 1 MLJ 311 (refd)

Selangor Jaya Sdn Bhd v Pembinaan Keng Tong (Sabah) Sdn Bhd [1994] 2 MLJ 97 (refd)

State of Bombay, The v Hospital Mazdoor Sabha AIR 1960 SC 610 (refd)

Tuan Haji Ahmad Abdul Rahim v Arab Malaysia Finance [1996] 1 MLJ 30 (refd)

Legislation referred to

Courts of Judicature Act 1964 s 3

Courts of Judicature Act (Amendment) Act 1998 s 3

Rules of the High Court 1980 O 56 r 1

Appeal from: (Civil Suit No MR28/1986 (High Court, Miri)

RR Sethu (*Tan Thiam Teck* and *Dominic Lai* with him) (*Dominic Lai & Co*) for the appellant.

Mekanda Singh Sandhu (*MS Sandhu & Co*) for the respondent.

PS Gill JCA (delivering judgment of the court): The appellant appeals against the decision of the learned judge of the High Court at Miri, who had dismissed the appellant's appeal against the ruling of the learned deputy registrar of the High Court, on an issue in regard to the admissibility of certain documents in the course of a hearing for assessment of damages. The documents ruled inadmissible were a re-amended statement of claim, notes of proceedings and judgment in respect of Miri High Court Civil Suit No MR 26 of 1990. The learned deputy registrar had disallowed the admissibility of the abovementioned documents after having heard submissions by counsel for both parties, following an objection by the counsel for the plaintiff.

On appeal before the learned judge, and before us, both counsel for the appellant/defendant and respondent/plaintiff argued on a preliminary issue, as to whether the appeal from the ruling by the deputy registrar in regard to the admissibility of the documents was competent and properly brought before the learned judge, in view of the definition of the word 'decision' under s 3 of the Courts of Judicature Act 1964 ('the Act'). This definition came into force on 1 August 1998 vide s 3 of the Courts of Judicature (Amendment) Act 1998.

It was also contended before us by the appellant's counsel, whether the appeal judge was correct in his interpretation of O 56 r 1 of the Rules of the High Court 1980 ('the RHC'), counsel addressed the court as to the function of a judge hearing an appeal, as a judge in chambers, from the decision of the deputy registrar of the High Court.

The appellant's counsel also took the view that having regard to the nature, purpose and function of the appeal process under O 56 r 1 of the RHC, the application of the amended definition of the word 'decision', pursuant to s 3 of the Courts of Judicature (Amendment) Act 1998, would militate against the spirit of O 56 r 1 of the RHC. For the record, O 56 r 1 of the RHC provides as follows:

> An appeal shall lie to a Judge in Chambers from any judgment, order or decision of the Registrar.

It was also the appellant counsel's argument that the word 'decision' in O 56 r 1 should not be ascribed with the meaning as provided in s 3 of the Courts of Judicature (Amendment) Act 1998, as it goes against the grain of authorities such as *Tuan Haji Ahmad Abdul Rahim v Arab Malaysia Finance* [1996] 1 MLJ 30 and *Selangor Jaya Sdn Bhd v Pembinaan Keng Tong (Sabah) Sdn Bhd* [1994] 2 MLJ 97 which state that an appeal pursuant to O 56 r 1 proceeds by way of a rehearing, that is to say, the judge is to treat the case as if it was being heard for the first time by him. To subscribe to the meaning of 'decision' as provided for in s 3 of the amended Courts of Judicature Act 1964 to O 56 of the RHC would be incompatible with the ethos of the aforesaid judgments. Shortly put, counsel contended that there was no 'decision' or 'appeal' to speak of in the context of O 56 of the RHC, and the judge was to treat the case as if it was being heard for the first time.

Interesting as this proposition is, we regrettably differ in our views as to the impact of an appeal under O 56 of the RHC. To this court, O 56 r 1

speaks of an appeal to begin with, and even though the authorities speak of the appeal as proceedings by way of a rehearing it does not to our mind detract from the fact that it still remains an appeal against a 'judgment', 'order' or 'decision' of the registrar of the High Court. The authorities, we feel, only serve as a guideline to the peculiar judicial approach, whilst hearing an appeal pursuant to O 56 of the RHC. The fact remains to us that the legislature and the Rules Committee in their wisdom intended the powers exercised by a judge pursuant to O 56 to be in his appellate capacity. The matter is thus *cadit quaestio*.

As to whether the meaning of 'decision' in s 3 of the Act as amended, should be ascribed to the word 'decision' in O 56 r 1 of the RHC, we see no reason why it should not. There is no definition of the word 'decision' in the RHC, and similarly there is no definition of the words 'judgment' or 'order' in the said RHC. The words 'judgment' or 'order' precede the word 'decision' in O 56 r 1 of the RHC.

In this context, we should then avail ourselves of s 4 of the Act which reads as follows:

> Provision to prevent conflict of laws
>
> In the event of inconsistency or conflict between this Act and any other written law other than the Constitution in force at the commencement of this Act, the provisions of this Act shall prevail.

We are thus fortified to hold that the meaning of 'decision' as provided for in s 3 of the Act as amended, should equally be ascribed to the word 'decision' in O 56 of the RHC.

What then about the words 'judgment' or 'order', where again there is no definition of it in the RHC, and equally in the Act. To this, we refer of course to the time honoured guidelines of contextual interpretation housed in the maxim of *noscitur a sociis* which was explained by Gajendragadkar J in the case of *The State of Bombay v Hospital Mazdoor Sabha* AIR 1960 SC 610 at p 613 as follows:

> It is, however, contended that, in construing the definition, we must adopt the rule of construction *noscitur a sociis*. This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their color from each other, that is, the more general is restricted to a sense analogous to a less general.

The doctrine of associated words which take their meaning from one another was applied in the case of *Maleb bin Su v Public Prosecutor* [1984] 1 MLJ 311. The brief facts of this case are that there were two applications made by respective counsel at the commencement of a hearing at the Magistrate's Court and Sessions Court, Seremban in that the president or magistrate should disqualify himself from proceeding with the case on the grounds that he belonged to a service in which the Attorney-General is said to be the head of the service. Since the Attorney-General is also the public prosecutor, and has supervision and control of these judicial officers, it was alleged that there was a likelihood of bias.

On appeal, the question of a right to appeal was considered by the learned judge, Hashim Yeop A Sani FJ (as he then was), and he stated as follows (at p 312):

> First, the question of the right to appeal. Under s 307(i) of the Criminal Procedure Code any person dissatisfied with any judgment, sentence or order pronounced by the magistrate in a criminal case may appeal to the High Court against any such judgment, sentence or order. There is no argument, in my opinion, that the ejusdem generis rule applies to the word 'order' which is preceded by the words 'judgment' and 'sentence'. The order must therefore be a final order in the sense that it is final in the effect as in the case of a judgment or a sentence. The test for determining the finality of an order is to see whether the judgment or order finally disposes of the rights of the parties. See discussion of this point in *Mohammad Amin Bros v The Dominion of India* (AIR 1950 FC 77). The order which finally disposes of the rights of the parties should be distinguished from a purely procedural ruling. See also *Public Prosecutor v Hoo Cheng Chwen* ([1962] MLJ 284) and *Public Prosecutor v RK Menon & Anor* ([1978] 2 MLJ 152). In the former case, Rose CJ of Singapore dealt with an appeal on the admissibility of certain statements and the learned judge held that the ruling of the magistrate was a procedural ruling and therefore not an appealable order. In the latter case, Ajaib J also correctly took the view that a ruling on non-compliance with s 129(i)(b) of the Criminal Procedure Code was a procedural and non-appealable ruling.

Bearing this in mind, we are thus sanguine enough to hold that the words 'judgment' or 'order' should take their color as it were, from the meaning assigned to the word 'decision', in the Act as amended.

And now to the issue at hand. Was the ruling of the learned deputy registrar on the issue of the admissibility of the document an appealable ruling?

In this context, a curial examination of s 3 of the Act as amended is required. Section 3 of the Act as amended defines the word 'decision' as follows:

> 'decision' means judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of parties.

Counsel for the respondent and appellant took us on a lengthy discourse of the nuances between a 'decision' which is a final order and a 'decision' as an interlocutory order, each holding their respective differing views on whether the admissibility of the said documents was a final and interlocutory order.

On hindsight, we feel that this entire exercise on the interpretation of the meaning of a final order and an interlocutory order was needless, and the case law that was tendered irrelevant. This is simply because one needs to merely look at the cold print of s 3 of the Act as amended, to see that any ruling made in the course of a trial or hearing of any cause and matter, which does not finally dispose the rights of the parties, does not constitute a decision for the purpose of s 3 of the Act, as amended. This is the stark reality of s 3 of the Act, as amended. It is simply and lucidly stated leaving

no room for doubt in its application. The intention of the legislature when drafting the amendment was that the amendment should serve as a filter process for appeals.

What we feel, however, must be emphasized with equal force when scrutinizing s 3 of the Act, as amended, is that the said ruling must be made in the course of a trial or hearing. Much emphasis, we feel, is placed on the latter part of the sentence viz-a-viz '... does not finally dispose of the rights of the parties', thus overlooking the fact that the ruling must be made in the course of a trial or hearing of any cause or matter. Counsel, we found, appeared to be preoccupied with the determination of whether the ruling disposes the rights of the parties, but paid scant regard to the fact as to at what juncture the said ruling was made.

Equal weight should be attached to the entire sentence of s 3 of the Act, as amended, for what must be asked is not only whether a ruling does not dispose the final rights of the parties but also the question whether it was a ruling made in the course of a trial or hearing of any cause or matter. If it was not a ruling made in the course of a trial or matter, regardless of the fact that it did not dispose of the rights of the parties, it may not be excluded by the definition of 'decision' as provided in s 3 of the Act, as amended, and is therefore appealable.

To answer to the question posed earlier on, the ruling by the learned deputy registrar on the admissibility of the documents made in the course of a hearing, was with equanimity, we say, a ruling on an issue other than the ultimate question, and is thus excluded by the exclusion clause in the definition of 'decision' in s 3 of the Act, as amended.

Suffice to say that the said ruling was not appealable, pursuant to the current version of s 3 and to that end the High Court judge was correct in upholding the preliminary objection of the respondent's counsel, that the said appeal was not competent. For the above mentioned reasons, the appeal is dismissed with costs. Deposit to the respondent towards account of taxed costs.

Appeal dismissed.

Reported by Lim Lee Na